



**The Comptroller General  
of the United States**

Washington, D.C. 20548

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## **Decision**

**Matter of:** Santa Cruz Construction, Inc.

**File:** B-226773

**Date:** July 2, 1987

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### **DIGEST**

Protest of rejection of late bid is denied where preponderance of the evidence in the record indicates that hand-carried bid was not delivered to bid depository prior to bid opening.

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### **DECISION**

Santa Cruz Construction, Inc. protests the rejection as late of its bid under invitation for bids (IFB) No. 10-0006-7, issued by the Kennedy Space Center, National Aeronautics and Space Administration (NASA). The IFB requested bids for the replacement of three 350hp air compressors at the Vehicle Assembly Building complex. Santa Cruz argues that its bid was not late and should have been considered for award. We deny the protest.

The IFB, as amended, set bid opening for April 1, 1987 at 3:00 P.M., and instructed that hand-carried bids were to be delivered either to a bid depository or to the bid office. Eleven bids were opened at 3:00 P.M., with Vic Lane Construction, Inc. the apparent low bidder. A bid from Santa Cruz was not among those opened.

A representative of Santa Cruz telephoned NASA the following afternoon to inquire as to the results of the bidding. After the contract specialist had provided him with the names and prices of the three low bidders, the Santa Cruz representative stated that his company's bid was lower than that of the apparent low bidder and asked why it had not been opened. The NASA official explained that no bid had been received from Santa Cruz. The Santa Cruz representative responded that his company had delivered a bid to the bid depository prior to 3:00 P.M. on April 1. The NASA official walked over to the bid depository immediately, unlocked it, and found the bid package from Santa Cruz inside.

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NASA notes that the IFB incorporated by reference Federal Acquisition Regulation (FAR), 48 C.F.R. § 52.214-7 (1985), which states that the only acceptable evidence to establish the time of receipt of a bid at a government installation is the time/date stamp of that installation on the bid wrapper or other documentary evidence of receipt maintained by the installation. NASA observes that no time/date stamp was found on the Santa Cruz bid package and that there is no other documentary evidence of receipt.

The referenced late bid provision is irrelevant for purposes of this case, however, since it applies only to bids sent by mail and not to hand-carried bids such as the protester's. K.L. Conwell Corp., B-220561, Jan. 23, 1986, 86-1 CPD ¶ 79. Neither procurement regulations nor decisions of our Office require that timely receipt of hand-carried bids be proved only by a time/date stamp or other documentary evidence maintained by the government installation. Instead, when the issue is whether a hand-carried bid was timely received, all relevant evidence in the record may be considered. All-States Railroad Contracting, Inc., B-216048.2, Feb. 11, 1985, 85-1 CPD ¶ 174. Such evidence includes statements by both the protester's employees and government personnel. Id.

In this case, the protester asserts that its courier dropped its bid into the designated depository at 2:53 P.M. on April 1, and that NASA officials failed to remove it prior to bid opening. The protester has offered no statement from the courier regarding her delivery of the package as evidence, however. NASA has furnished a statement from the bid officer indicating that she examined the bid depository twice after 2:53 P.M., once at 2:55 P.M. and again at 3:00 P.M., and did not find the bid package. The bid officer states that when she checked the bid depository at 2:55 P.M., she found only one bid package, from a bidder other than the protester; when she checked at 3:00 P.M., she found the depository empty. In addition, NASA has furnished statements from two of the bid officer's co-workers stating that they witnessed her checking the depository.

The protester contends that unless the agency can prove that its bid was late, the bid should be considered for award. That is not the rule followed by this Office, however. We have held that unless a preponderance of the evidence in the record indicates that a bid was timely delivered, see, e.g., All-States Railroad Contracting, Inc., B-216048.2, supra, the preservation of the integrity of the competitive bidding system dictates that where a bid might have been delivered after other bids have been publicly opened, the bid may not be considered for award. Free State Builders, Inc., B-184155, Feb. 26, 1976, 76-1 CPD ¶ 133; see

also Arnold Rooter, Inc., 65 Comp. Gen. 71 (1985), 85-2 CPD ¶ 574. The preponderance of the evidence in the record here indicates that Santa Cruz's bid was not placed in the bid depository prior to bid opening. We therefore conclude that NASA properly rejected the bid as late.

The protester also complains that NASA's procedures were inadequate because they did not provide for issuing receipts for bids placed in the depository shortly before bid opening. We point out that procurement regulations regarding locked bid boxes do not require documenting the receipt of such bids. See FAR, 48 C.F.R. § 14.401(a) (1986). As a result of this incident, NASA, nevertheless, has amended its bid receipt procedures. All bids are apparently now stamped with the time and date before being placed in the depository, and written receipts are furnished for all bid packages. These procedures, although not required, will preclude the possibility of a recurrence of this type of situation.

The protest is denied.

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General Counsel